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File No. O-Boroughs/49
Part I

Legal Department—
A **BRANCH**

Subject:— Opinions under the Bombay Municipal Borough Act 1925.

(For subsequent papers please see Part II)

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File No. O-Boroughs/49
Part I

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C.G.R. 6.6.

C 5

Office of the S.L.A.

Bombay Municipal Boroughs Act, 1925. Sections 12(2) (b) and 28(1)(a).

It appears that the Collector of East Khandesh has passed an order under clause (a) of section 28, sub-section (1) of the Bombay Municipal Boroughs Act disabling Mr. Ruhullakhan Bismillakhan from continuing to be a councillor of the Jalgaon Borough Municipality and declaring his seat to be vacant on the ground that he attended the meeting of the Board held on 28th March 1946 and voted on the resolution giving contract to his real brother. H. & L.G.D. appears to be of the view that the Collector's order is not correct and the S.L.A. is requested to advise.

2. Section 28, sub-section (1) of the Bombay Municipal Boroughs Act, 1925, provides: "If any councillor during the term for which he has been elected or nominated

(a) becomes subject to any disqualifications specified in section 12, or

(b) acts as a councillor in any matter

(i) in which he has directly or indirectly, by himself or his partner any share or interest as is described in clauses (i), (ii), (iii), (vi) or (viii) of Sub-section(3) of section 12 whatever may be the value of such share or interest

or

(ii) in which he is professionally interested on behalf of a principal or other person, or xx

(iii) in which he is engaged at the time in any case against the municipality, or

(c) etc.

The councillor Ruhullakhan did not act as a Councillor in any of the matt

(c) etc.

The councillor Ruhullekhan did not act as a councillor in any of the matters specified in clause (b) ofsection 22, sub-section (1). Consequently the Collector's Order which is groundedx on Mr. Ruhullekhan acting as councillor in the matter of sanctioning a contract to his brother would not come within clause (b) of section 22, sub-section (1). The next question for consideration is whether by reason of the fact that Mr. Ruhullekhan voted on the resolution relating to the contract given to his brother became subject to any disqualifications specified in section 18. The relevant provision is section 18, sub-section (2) (b) which provides: "No person whoxx who save as hereinafter provided, has directly, xxx or indirectly, by himself or his partner, any share or interest in any work done by order of a municipality, or in any contract or employment with or under or by or on behalf of a mybuxxxxkutt natxhe municipality may be a councillor of such municipality. In Hariman Vs. Mybuxxxxkxxx Municipal Corporation of Bombay, I.L.R.47, 809 at page 821, Kulla J. after reviewing the English authorities on the point held that interest in any work done by order of a municipality or in any contract or employment with or under or by ~~order~~ or on behalf of a municipality must not be too speculative xx or remote xxx nor must it be a mere sentimental interest such as which a father may have in the prosperity of his son, but when there is a pecuniary advantage or reasonable expectation of pecuniary advantage it must be regarded as an interest within the meaning of the section . Collector's view, as

as stated in the order, that 'interest' in section 12 of the Bombay Municipal Boroughs Act may mean even sentimental interest is not correct. What is relevant for decision is whether Mr. Ruhullekhan has any direct or indirect interest in the sense of a pecuniary advantage or reasonable expectation of a pecuniary advantage. It is alleged by him that he and his brother are separate and he has no interest at all in the contract or his brogher. If this contention is true, it would seem that Mr. Ruhullekhan has no pecuniary advantage or a reasonable expectation of a pecuniary advantage in the contract given to his brother by the municipality. He may have a sentimental interest in the prosperity of his brother, but that would not be sufficient to disqualify him for continuing to be a councillor. At any rate, it is clear that if this kind of interest is enough to disqualify Mr. Ruhullekhan he could be disqualified even if he had not voted on the resolution, but the Collector seems to have disqualified him mainly on the ground that he voted on the resolution relating to the contract given to his brother. In the circumstances, the order of the Collector is not valid.

Sd/- 5/1/49

Remembrance of Legal Affairs.

U.R. to H.& L.G.D. No. 184 dated the 6th January 1949.

C.G.R. 7-6-

C B

The Bombay Municipal Boroughs Act, 1925-

'Sec. 28 (1)(a) read with sec. 12(2)(b).

Office of the R.L.A.

The attention of the Health and Local Government Department is invited to R.L.A 's opinion No. 5536, dated the 8th August 1949 where a similar question was considered. Mrs. Phalak has incurred a disability under section 28(1)(a) read with section 12(2)(b) of the Bombay Municipal Boroughs Act by reason of her husband being an employee the local authority and not by reason of voting on the resolution confirming husband.

Sd/- 14/1
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No 714 dated the 20th January 1949.

C.G.R 7-6-

C 8

Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925 sections 68(r) and 71(r).

Construction of Police Chowky.

The question raised for R.L.A's consideration is whether the expediture proposed to be incurred by the Nadiad Borough Municipality over the construction of a Police chowky would be permissible under the Bombay municipal Boroughs Act, 1925.

Clause (r) of section 68 of the Bombay Municipal Boroughs Act imposes a duty on the municipality to make a reasonable and adequate provision for paying the salary and contingent expenditure on account of such Police or Guards as may be required by the municipality for the purposes of this Act or for the protection of any municipal property. The Nadiad Municipality would be competent to incurred expenditure over the construction of such chowky; but, no such Police or Guards are required by the municipality for the purposes of this Act or for the protect of any municipal property. Consequently, clause (r) of section 68 would not be available. Clause (r) of section 71 provides for the discretionary powers of expenditure by the municipality over any other measure not specified in section 68 likely to promote the public safety, health, convenience or an education. The use of the word "other" suggests that the measure should be similar in character to what is described in section. Section 68 does not provide for making any provision for maintaining Police or Guards by municipality though not required for the purposes of this Act or for the protection of any municipal property. The maintenance of such Police or Guards is intended to provide for the general safety of the public and

1. If a chowky is required for stationing the Police or Guards required by the Municipality for the purposes of this Act or for the protection of any municipal property.

safty of the public and is acknowledged to be the duty of Government, and, that being so, to provide for chowkies ~~fore~~ for sheltering such Police would be equally the duty of Government. Consequently, it would not be permissible for ~~kh~~ the municipality to shoulder the responsibility of Government and incur unnecessary expenditure over the construction of a chowky for the Police. The expenditure would, therefore, be not permissible even under clause (r) of section 71 of the Bombay Municipal Boroughs Act.

Sd/ 11/1/49
Remembrance of Legal Affairs.

.R. to H.& L.G.D. No. 370 dated 13th January 1949.

.G.R. 7-6

Office of the R.L.A

Bombay Municipal Boroughs Act, 1925. Section ~~73(ii)~~ 73(ii).

It appears that the President, Ahmednager Municipality contends that under section 73(ii) of the Bombay Municipal Boroughs Act, 1925, the Ahmednagar Municipality is entitled to levy a wheel tax on all vehicles kept for use within the Municipal Borough whether the said vehicles may actually be kept with or outside the municipal limits, and consequently the State Transport Buses would be liable to the wheel tax. The Porvincial Motor Transport Controller has no objection to paying the wheel tax on buses which are actually stationed in the city limits only as the State Transport Service is run on a commercial basis. He, however, considers that the Ahmednagar Municipality cannot claim wheel tax even on vehicles visiting the area. R.L.A. is requested to advise.

2. Section 73(ii) of the Bombay Municipal Boroughs Act provides for the levy of a tax on all vehicles, boats or animals used for riding, draught or burden and kept for use within the said borough, whether they are actually kept within or outside the said borough. In appeal No. 113 of 1940 the High Court held that a vehicle plying between two municipalities must might possibly be liable to a wheel tax by both the municipalities at the same time. After this decision the R.L.A. was consulted, and in his opinion No. 4389, dated 23rd June, 1943, the R.L.A. held that according to that decision a bus garaged at Kaira and plying between Kaira and Nadiad was liable to be taxed by both the

by both the Municipalities. After this opinion was given, a proviso was added to section 73(ii) which is as follows :

"Provided that where a ~~maxxax~~ motor vehicle is kept for use within the said borough as well as another municipal borough or municipal district, it shall be liable to be taxed only by the municipality within, or nearest to whose, limits the said vehicle is actually kept."

It is clear from this provision that the Ahmednagar Municipality would be entitled to claim wheeltax in respect of buses plying between Ahmednagar and another municipal town, only if such buses are actually kept for use in the Ahmednagar, while plying between two towns, t.e claim of the Ahmednagar Municipality for a wheel tax does not appear to be valid. What is essential for the levy of a wheel tax under section 73(ii) is that the vehicle must be kept for use within the municipal ~~xitixxxmi~~ limits. The expression "kept for use" was interpreted in Chunilal v.Ahmedabad Municipality, 41 B.L.R. 1249 as meaning kept for normal use. The vehicles that merely pass through Ahmednagar Municipality on their bus route cannot be considered to have been kept for normal use within the municipal borough limits. Consequently such buses would not be liable to the wheel tax under section 73(ii).

sd/- 1/1/

Remembrancer of Legal Affairs.

U.R. to H.D., No 708 , dated the 20th January, 1949.

C.G.R. 7-6-

C S

Office of the S.L.A.

Levy of Octroi duty on State Transport Buses.

Sections 53(j) 61(n) and (ee)

The Bombay Municipal Boroughs Act, 1925.

Under sections 53(j) 61(n) and (ee) of the Bombay Municipal Boroughs Act, 1925, the Ahmednagar Borough Municipality has framed th Octroi Rules and by-laws. Sub-rule (1) of rule 4 provides that subject to the exemptions and the provisions hereinafter expressly specified, a tax on all goods fo the description mentioned in Schedule A, shall , on the import thereof by road, be payable to the municipality at the rates specified for such goods respectively in the said Schedule. Under item 161(a) of schedule A, motor cars, motor buses, motor cycles, chassis tractors chassis, tractors or any other vehicles drawn by motor powers which at the time of import are not registered or licensed only for a limited period, are liable to payment of octroi. The provincial Motor Transport Controller, however, states that the vehicles are registered in Bombay and are kept for trial; after this they would be sent to various centres. As the State Transport Buses were already registered before they were imported or brought within the limits of the Ahmednagar Municipality, they would not fall within the description of Motor Buses mentioned in item 161(a) of Schedule A. Consequently, the State Transport Buses would not be liable to payment of octroi duty under rule 4(1) of the Octroi Rules and By-laws.

The goods exempted from the payment of octroi are specified in sub-rule (2) of rule 4, under which the following goods are exempted from octroi namely:-

(a) Personal effects not imported for sale;

(b) personal luggage and household kit;

(c) goods which (not being articles imported by Governme ment agency for sale) are the property of public authority and are accompanied at the time of import with an invoice endorsed with a certificate to that effect signed by the Officer under whose authority they are imported.

(d) & (e) X X X X

Under sub-rule (3) of rule 4, the tax shall, except in cases where an account current is kept under section 99 of the Bombay Municipal Boroughs act, be payable to ~~x~~ the Import Naka Karkun at the at the time of import on his tendering an import bill for the same. The expression "public Authority" as defined in clause (e) of rule 2 means Government, local board or a municipality, There is no doubt that the State Transport buses are the property of Government. As they are imported or brought into the Octroi limits of the Municipality for operating the service on certain routes, and are not intended for sale, the buses would appear to be exempt from payment of octroi even under rule 4(2)(c).

In any event the State Transport buses would not therefore be liable to payment of Octroi duty under the provisions of the Octroi Rules and By-laws framed by the Ahmednagar Borough Municipality.

sd/- [illegible]
Remembrancer of Legal Affairs.

U-R. to H.& L.G.D., No. 563 dated the
17th January 1949.

C.G.R. 7-6-

C 5

L.D.R.I. No. 17565 dated 31.12.1948.

Submitted with reference to H. and L.G.D. note at pp. 143-46 ante.

The facts of the case in brief ~~xxxx~~ are as follows:-

The Poona Municipality proposes to abolve (1) house-tax, (2) drainage tax (3) general water tax (4 ; general sanitary cess (5) special water tax (6) special sanitary cess (7) cess pool tax and (8) licensing of dogs, and levy only two taxes viz. (1) general water rate at 14% of the annual letting value and (2) Special Water Rate. The intention of the Municipality is to cut off water supply as soon as the taxes in arrears and thus compel the defaulter to pay up immediately. Clause (c) of the proviso to sec. 73 provides that "the Municipality in lieu of imposing separately any two or more of the taxes described in clauses (i), (viii) (x) and (xi) may impose a consolidated tax assessed as a rate on buildings or lands or both situated within the Municipal borough."

In view of this provision, H. and L.G.D. is of the opinion that the above proposal of the Municipality cannot be accepted. That Department further thinks that the device to be adopted to compel defaulters to pay up thetax, would be tyrannical and ultra vires Chapter VIII of the Boroughs Act. R.L A. has been requested to advise whether the x rules and Bye-laws framed by the Poona Municipality are ultra vires sec. 73 and Chapter VIII of the Bombay Municipal Boroughs Act, 1925.

It is clear from the provisions of clause (c) of the proviso to sec. 73 (stated above) that a borough Municipality can in place of any two or more of the following taxes, viz :-

(1, the rate on buildings or lands or both situated within the municipal borough (sec. 73(i);

(2) the general sanitary cess for the construction and

maintenance of public latrines, and for the removal and disposal of refuse (sec. 73(viii);

(3) the general water-rate or special water rate or both for water supplied by the municipality which may be imposed in the form of a rate assessed on buildings and lands or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of case or of any individual case, (sec. 73(x);

(4) the lighting tax (sec. 73(xi))

impose a consolidated tax assessed as a rate on buildings or lands or both situated within the municipal limits (i.e. tax mentioned at item (1) above). A municipality cannot therefore consolidate the above mentioned 4 taxes into a general water rate or a special water rate. Proposal of the Poona Municipality therefore to levy only a water rate in the form of a rate on buildings or lands or both situated within the municipal limits instead of:-

(1) house tax (2) drainage tax (3) general water tax (4) general sanitary cess (5) special water tax (6) special sanitary cess, (7) cess pool tax and (8) licensing of dogs is not proper. The Municipality can levy only a rate on buildings in place of taxes at items (1), (3) (4) and (5) if desired. According to sec. 112 of the Municipal Boroughs Act, 1925.

" All sums due on account of any tax imposed in the form of a rate on lands or buildings or both shall, shal subject prior payment of land-revenue, if any, due to His Majesty thereupon, be a first charge upon the building or land , in respect of which such tax is leviable and upon the movable property, if any, found within or upon such building or land, and belonging to any person liable for such tax".

It is therefore clear that the x tax which is proposed to be imposed will be first charge upon the building or land in respect of which it is levied and upon the movable property found within such building and will have to be so levied in accordance with the procedure laid down in Chapter VIII. It may also be pointed out that this Chapter does not empower a Borough Municipality to cut off of water supply in case a water rate is not paid. In chapter XVI of Aiyangar's Law of Municipal Corporations British India it is stated: "The procedure to be adopted for collection of taxes due to municipal corporations is prescribed by the various Statutes in detail and they should be strictly followed. The specific statutory mode of collection must be pursued. If the Statute gives to a Municipal Corporation a specific and complete remedy for the collection of taxes as by distress and ~~xx~~ sale of property, or by making them a lien upon real estate, and providing for sale thereof in default, of payment this will ordinarily be regarded as excluding by implication of the right to resort to any other mode of enforcing a tax and an action against x a tax payer to recover a personal judgement as for a debt will not lie."

It therefore follows that draft Rule 38 framed by the Poona Municipality would be ultra vires Chapter VIII.

The view take taken by the H. and L.G.D. that the proposal of the Poona Municipality would be ultra vires sec. 73 A and Chapter VIII of the Bom. Municipal Borough Act is therefore correct.

From the extract of the proceedings of the meeting of the General Board held on 10-10-1946, it appears that the Board ~~xxxxxxxxxxxxxxxx~~ resolved to abolish the existing eight taxes imposed by the Poona Borough Municipality, namely House-tax, drainage tax, water-tax, general Sanitary cess, general

general water-tax, special Sanitary cess, cess-pool tax and dog tax, and to impose the following new taxes, namely :-

(i) the general water-rate, and

(ii) the special water-rate.

The municipality has accordingly framed new rules and by-laws for the levy of the said two classes of taxes. The Asstt. Secy., H.& L.G. Deptt. has raised objections to the levy of the said taxes. First objection as stated in para 2 of his note is this :-

"Section 73 of the Bom. Municipal Boroughs Act prescribes the taxes leviable by the Municipality. Clause (c) to the proviso to this section permits the imposition of one consolidated tax assessed at a rate on buildings and lands in place of four taxes only, namely (1) rate on buildings or lands (2) general sanitary cess (3) general and special water rates (4) lighting tax. This statutory provision has to be construed strictly. In effect, the Municipality wishes to amalgamate eight different taxes levied at present.

..... We cannot, I think, agree to the abolition of the drainage tax which cannot be included in the consolidated tax. etc."

The B.L.A. is requested to advise whether the above view is correct.

Under section 73 of the Bom. Municipal Boroughs Act, 1925, subject to the general or special orders which the Provincial Government may make in this behalf and to the provisions of sections 75 and 76, a municipality may impose any of the taxes specified in clauses (i) to (xiv). Clause (c) of the proviso, however, provides that the municipality, in lieu of imposing <u>separately</u> any two or more of the taxes described in clauses (i), (viii) (x) and (xi) may impose

impose a consolidated tax assessed as a rate on buildings or lands or both situated within the municipal borough. Under clause (c) of the proviso only the following taxes specified therein can be consolidated instead of imposing them separately:-

(i) a rate on buildings or lands or both situated within the municipal borough;

(ii) a general sanitary cess for the construction and maintenance of public latrines,

(iii) a general water-rate or a special water-rate or both for water supplied by the municipality etc; and

(iv) a lighting tax.

The drainage tax which is specified in clause (ix) of section 73 has been excluded by implication from clause (c) of the proviso to section 73. Consequently, under clause (c) of the proviso drainage tax can be imposed only separately and it cannot be consolidated with any of the four classes of taxes specified therein.

The question for consideration is whether the present porposal of the Poona Borough Municipality to impose the consolidated general water rate and special water-rates is also in lieu of the drainage tax.

Under rule 4 of the draft x rules and by-laws passed by the Poona City Borough Municipality, the Municipality shall levy a general water rate on all buildings within the limits of the Municipal Borough, subject to the exceptions and limitations mentioned in rules 14 to 17,26,27 and 28. Under rule 5, the general water rate shall be levied at the rate of 14 P.C. on the rateable value of the building:

Provided that in the case of buildings which are provided with water connections the minimum annual amount of the general water rate shall not be below Rs. 25/-. Rule 24 provides that a building which is assessed to the general water rate shall be provided with

(i) One drainage connection, and

(ii) One water connection of half an inch, free of any additional rate or tax for the same. Under rule 26, in case the Municipality is unable to supply water connection, the general water rate shall be assessed and levied at the rate of 8 p.c. on the rateable value of such building. Rule 27 provides that where the municipality is unable to allow waste-water or privy contents of a building to be connected to and passed through the Municipal drainage system, the general water rate shall be assessed and levied at the rate of 8 p.c. on the rateable value of such building. Rule 28 provides that where the municipality is unable to supply.-

(i) water connection, and

(ii) drainage connection,

the general water rate shall be assessed and levied at the rate of 6 p.c. on the rateable value of such building. Attention is also intited to rules 29 to 31. Under rule 31, a building or land shall be deemed to have been actually connected with the municipal drainage system when arrangements are made by its owner or occupier for the waste water to pass from it to the gully trap chamber or the municipal drainage time. Rules 4 and 5 read in context with rules 24, 26, 27 and 28 make it clear that the general water rate proposed to be imposed at the rate of 14 p.C. on the rateable value of the building is a consolidated tax imposed for the services rendered by the the municipality and these services are in the shape of water connection and drainage connection (see rule 24). The provisions of Rules 27 and 28 make it clear beyond pale or doubt that where the municipallity is unable to supply drainage connection, the general water rate is not to be levied at the prescribed rate of 14 p.c. but at a reduced rate of 8 p.c. , on the rateable value of the building concerned. These provisions indicate that the tax outwardly labelled as a "general water rate" is in fact comprised of two different taxes namely, the general water rate and the drainage tax.

But under clause (c) of the proviso to section 73, it is not permissible for the municipality to consolidate the water-tax with the drainage tax and consequently it would not be legal to to impose the general water rate on the lines proposed ~~by~~ by the Municipality. Even the Ahmedabad Municipality which mainly levies water-rate has made a separate provision for levy of drainage tax as a separate tax (vide rule 320).

The second point of objection in Mr. Rao's note is that the provision for cutting off the water supply as soon as the tax was in arrear, is in ingenious device which is tyrannical and worse than third degree methods. He considers that such a provision is ultra vires the provisions of Ch. VIII of the Act which prescribes the procedure for the recovery of municipal dues.

Rule 38 provides that the Chief Officer may at any time stop or cut off water connection under the circumstances mentioned in clauses (a) to (g). Under clause (p) of section 61(1) a Municipality can frame by-laws for conserving and preventing injury to sources and means of water supply and appliances for the distribution of water, and regulating all matters and things connected with the supply and use of water and the turning on and turning off and preventing the waste of water ect. Under clause (ee), a municipality may make by-laws generally for regulation of all matters relating to municipal administration. A similar provision was made in the by-laws of the Surat Municipality and when the matter was taken to Court, such provision in the rules was not held to be ultra vires by the Court (cf. 29 Bom. L.R. p. 1465) Mr. Rao's contention is not correct.

A.L.R. Reply may be:-

On the first point the view taken by A.S., & H & L.G.D. is correct as cl(c) of the proviso to section 73(1) of the Bom. M. Boroughs Act, 1925 is quite clear; but as regards the second point this ~~xx~~ view is not quite correct for a by-law can be framed under section 61(ee) providing for ~~entering~~ cutting off water supply in the event of

Sx

A.L.R. Reply may be:-

in the event of default in payment of water charges (if of 29 Bom. L.R. 1465).

Sd/-

U.R. to H.& G.D., No. 1005 of 27th January, 1949.

C.G.R. 7-6-

L.D.R.I.No. 14239
dt. 27.10.48.

Submitted,

The Poona City Municipality hasf framed a by-law under section 61(1)(ee) of the Bombay Municipal Boroughs Act and has submitted it for sanction. The by-law is as follows:

"When an application is made by any person to the Municipality for the purchase or lease of any municipal land, it shall be accompanied by a sum of Rs.2/- on account of fees for the preparation of the necessary plans and sketches, which shall not be refunded mxx even if the application is rejected by the municipal authorities or the Collr. or the Commr. The application will not be entertained if the fees is not paid."

The Health and Local Govt.Deptt. considers that a municipality can only levy fees as laid dxwx down in section 58(j) read with sections 90 and 91 and as the present proposal does not fall within these provisions it proposes to reject it. The R.L.A. is, however, requested to advise.

Under section 61(1)(ee) a municipality is no doubt empowered to make by-laws generally for the regulation of all matters relating to municipal administration and such by-laws may provide for regulation of applications for lease and sale of municipal lands. A power to levy fees for such applications is, however, not included in S.61(1)(ee) and any such power will have to be derived from the other provisions of the Municipal Act. From Section 53(j) and Section 90 it is obvious that the xxxx power of charging fees is limited only to matters prescribed therein and in the circumstances the proposed by-law is ultra-vires. The view taken by the H.and L.G.D. is correct.

offices of the B.L.A.

Bombay Municipal Boroughs Act, 1925.

Secs. 73 (a) and 74(1)-

Levy of taxes on buildings beneficially ~~was~~ occupied by Government.

It appears that the Broach Municipality has been now levying the special education tax and lighting tax on the basis of the full capital value of the buildings and lands and claims to levy those taxes even on Government buildings which are beneficially occupied on the ground that these taxes are assessed on the capital ~~xxpixexxfxhg~~ value of the buildings and as such no consent of Government is necessary. The Commissioner, Northern Division, considers that the consent of Government to the levy of these taxes on Government properties is not necessary. The R.L.A. is reported before.

The view taken by the Commissioner, Northern Division, is not correct. It is true that under section 74(1) of the Bombay Municipal Boroughs Act, 1925, Government is liable to pay to the Municipality annually in lieu of a rate on buildings which buildings vesting in Government are exempted by the proviso (a) to section 73, a sum ascertained in the manner provided in sub-sections (2) and (3). But the special reduced payment in lieu of rate on Government buildings, which are beneficially occupied is not strictly speaking a rate on building within the meaning of section 73 clause (1). A lighting tax and special educatio tionkx tax are taxes entirely different from a rate on buildings (see clauses(i),(ii) and (iii) of section 73). Although a lighting tax and special education tax are levied on the basis of the capital value they cannot be construed as rates on buildings. Consequently, without the express consent of Government these taxes cannot be levied on buildings beneficially occupied by Government (see proviso (a) to section 73).

sd/.

Consequently, ~~with~~ without the express consent of Government these taxes cannot be levied on buildings beneficially occupied by Government (See proviso (a) to section 73).

Sd/. 22/2
Remembrancer of Legal Affairs.
U.R. to H.& L.G.D. No. 2175 dated 23rd February'49.

C.G.R. 7-6-

Office of the R.L.A.

Levy of general and special water-rates.

The point raised by Secretary, Health and Local Government Department is covered by the R.L.A's opinion No. 139, dated the 11th January 1933. A General Water-rate is imposed for water supplied to the public generally while the special water can be levied for water supplied by private water connections to an individual. Consequently both rates can be levied from the same householder provided he is given private water connection also.

Sd/- 8/3
Remembrancer of Legal Affairs
U.R. to H.& L.G.D. No. 2687, dated the
9th March, 1949.

C.G.R. 7-6-
C 5.

Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925. Sec.33(1).

Post facto sanction to Chief Officer's post.

The view taken by the District Government Pleader, Belgaum, that Mr. Nimbalkar's case is not covered by the first proviso to section 33(1) of the Bombay Municipal Boroughs Act, 1925, is correct.

The second proviso to section 33(1) contemplates that the sanction of Government must precede the appointment. Strictly speaking, far therefore, no retrospective sanction of Government can be lawfully granted Since however Mr. Nimbalkar hash been ht holding the post for the last four or five years and has, during this period, exercised the statutory powers attached to the post, the only course left open, short of legislation, to provide some legal cover to all his acts would be to accord sanction retrospectively.

Sd/- 4/3
Remembrancer of Legal Affairs.

U.R.to H.& L.G.D., No. 2586, dated the 7th March, 1948.

C.G.H. 7-6-

C 5

L.D.R.I. No. 2338, 1414-2-1949

In pursuance ofthe R.L.A's opinion No.10021, dated 10-11-48 Govt. directed the Collr. of Kaira to suspend under sec. 214(1) of the Bombay Municipal Boroughs Act, 1925 the execution of the Nadiad Municipality's resolution No. 405, dated 28-12-1948 appointing Mr. V.N.Desai as the Chief Officer of that Municipality. In view of the Collr's M order No. M.V.N.N. dated 22-12-48, the General Board of the Municipality passed a resolution (No. 316 dated 10-1-49) and decided to invite fresh applicati ns for t e Chief Officer's post from candida'es possessing qualifications as laid down in sec. 33 of the B.M.B.Act, 1925. Furt er it was decid-d to continue Mr. Desai as Chief Of ic f Officer pending new appointment. An amendment moved by one of the councillors that the post should be held by the Secretary pending new appointment was lost.

The question for the R.L.A's consideration is whether it would be open for the Municipality to midify its resolution after a lapse of three months and appoint a person possessing the qualifications rescribed by sec. 33 of the Act and also whether the action of the Municipality in continuing Mr. Desai in office even after the suspension of t e resol tion is in order. A Instead of acquiring S.No.
pno 1114 as proposed in the R.D. Office note, the proper course would be that under sect. 134 (3) of Bom. Municipal Boroughs Act, 1925 Chief officer whould direct the

owner of ~~shop~~ S.No. 1114 to remove the 'Meda' projecting over the Municipal street land (S.no 1115) on payment of ~~reasonable conforms action~~ reasonable Compensation of (R.L.A's opinion No 2201 of 28-2-1940).

sd/-

U. to R.D. No 1245 of end February 1929.

C.G.R. 8-6-

C 5

L.D.R.I.N.146 98 dt. 6-11-48

These papers pertain to the representation of Mr. Angadi, ex-president of the Gadag Betgeri Municipal Borough. He contends that he had called a meeting for the election of the new President and vice president xx on 23-5-48, but the Collector of Dharwar cancelled this meeting on ~~23-5-48~~ 25-5-48. A new meeting on the same day (i.e. 25-5-48) and called thereby contraventing Sects. 19(1), 23(2) 35 & xxiii 192 ~~a new meeting on the same day (i.e. 23.5.48)~~ of the B.M.B.A's25. The notice of the meeting was irregular for want of 3 clear day's notice and requisite publicity as required by Sec. 35 of the B.M. B.Act, and also because it did not contain the full agenda. At the outset of the meeting one Mr. Badigannavar, M.C. raised a point of order in writing contending that notice of the meeting was improper. The print of order was upheld and Mr. Angadi declared the meeting h to be legally dissolved, but the eafter some members continued the meeting and elected their new President & Vice President. Mr. Angadi therefore prays that the above mentioned meeting should be declared illegal and resolution electing the President and the Vice President may be cancelled by Govt. under Sec. 220 of the B.M.B. Act 1925 and a fxx xxx fresh meeting may be held for the purpose.

The H.& L.G.D. is of the opinion that 1) the meeting was legally called by the Collector under Sec. 23 (2), and that since the President had already called the meeting on the same date, and the Collr. called the same meeting under his authority, xx it can be maintained that in view of the notice issued by the president xf the members must have held themselves in readiness for the meeting. The irregularity cann t therefore be said to have vitiated the meeting and can be condoned under Sec. 57.

Office of the R.L.

Municipal Co___
Act, 1925
Sec. 12(8)
Disqualification
of a Councillor
for surety bond.

There is no substance in the first contention raised by Mr. Chavan (see R.L.A's opinion No. 138-p, dated the 1st October 1940). His second contention involves the question about the genuineness of his application dated 3-9-1946 terminating the surety bond. The Collector after considering all the circumstances including what purports to be an endorsement of receipt, has found that the application is not genuine, which finding is also endorsed by the Commissioner, Southern Division. The reasons given by the Collector in support of that finding are cogent, and there appears no valid ground to disagree with the Collector's view. Consequently, the second contention also fails.

Sd/- 19/2
Remembrancer of Legal Affairs.
U.R. to H.& L.G.D. No. 2072 dated the
21st February '49.

C.G.R. 8-6-
C 5

Office of the R.& A.

Bombay Municipal Boroughs Act, 1925. sec. 73(ii)
Bombay District Municipal Act, 1901. sec. 59(ii).

The view taken by H.& L.G.D. in its office note at p.5 ante is correct. To avoid double taxation in such cases the proviso to section 73(ii) of the Bombay Municipal Boroughs Act, 1925 and to section 59(ii) of the Bombay District Municipal Act, 1901, may be amended provided the Central Government is willing to amend the Cantonments Act, 1924, on reciprocal basis.

Sd/-
Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No. 2437 , dated 2nd March, 1949.

C.G.R. 8-6-

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Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925.

Section 84(1).

Under section 84 (1) of of the Bombay Municipal Boroughs Act, 1925, the assessment list has to be revised at least once in every four years. As four years since the current assessment list was first made would elapse at x the end of this month that list cannot be continued during the next year i.e. 1949-50 Consequently the assessment list will have to be revised. Attention is invited to R.L.A's opinion No. 133-confl., dated the 5th August 1939 and in the Advocate General's opinion dated the 13th August 1939 and as pointed out in those opinions it is not necessary that the revised assessment list should be ready before the commencement of the next year.

The Bandra Municipality should therefore be asked to proceed with revising the assessment list as expeditiously as possible.

Sd/- 17/3
Remembrancer of Legal Affairs.
C.R. to H.& L-G.D., No. 3014 , dated the
17th March, 1949.

C.G.R. S.6.

K C S

Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925. Sections 61(1)(ee)and 73(c).

The consolidated tax though inclusive of water charges would be assessed as a rate on building or lands or both under sec. 73(c) of the Bombay Municipal Borough Act, 1925 and it would be competent for a Municipality to frame by-law under section 61(1)(ee) for cutting off water connection in the event of default after notice in payment of the consolidated tax.

Self-1913

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No. 3084, dated the 10th March, 1949.

G.G.R. S.B.

C 5

Office of the H.L.A.

The words "shall cause an assessment-list .... to be prepared" in section (1) read with the words " or any person acting under his authority" in sub-section (3) of Section 78 of the Bombay Municipal Borough Act, 1925, imply that the person appointed to prepare the assessment-list should, in each case act under the actual instructions suitable to the case given by the Chief Officer (see observations of Sherman J. in Davis v. Morris (1923), 2 K.B. 508 at 513), if, therefore, the instructions given from time to time by the Chief Officer are not followed by the person being under the authority of the Chief Officer, the Chief Officer would be quite justified in correcting the list prepared by such person. To that extent the view expressed by the U.S., H.& L.D., is correct.

Sd/- 1/3

Remembrancer of Legal Affairs.

U.S.to H.& L.D., No. 2764 , dated the 10th March, 1949.

C.O.R. 8-3-

C 5

Office of the R.L.A.

Question whether the term of the Members of the Standing Committee is co-extensive with that of the Councillors.

Section 37(1) and 38(2) of the Bombay Municipal Boroughs Act, 1925.

The objection taken to the appointment of Committees in the present case is not tenable. The provisions of section 37(1) and section 38(2) of the Bombay Municipal Boroughs Act, 1925, prescribing the period of office of these Committees would be subject to section 25(1). Consequently, if the term of office of councillors expires before the termination of one year period prescribed under section 37(1) and section 38(2), the term of office of these committees would also be deemed to expire along with the office of councillors. There was no legal objection to appointing these committees at the meeting of the Malegon Municipal Board meeting called on 29-3-1948 even though the period of the Board was to expire on 4-4-1948.

As usual a fee of Rs. 80 may be charged to the Malegaon Municipality.

Sd/ 26/3
Remembrancer of Legal Affairs.
U.R.C. R.A & L.D. No 3329 dated the 26th March, 1949.

C.G.R. 8-6-

C 5

Levy of "octroi" by Municipalities.

The Bombay Municipal Boroughs Act, 1925 sec. 73(iv).

The Bombay District Municipal Act, 1901 section 59.

The Government of India Act, 1935 List II Entry 49.

Under the Bombay Municipal Boroughs Act, 1925, "octroi" is defined in section 3(12) to include a terminal tax. Section 73(iv) of that Act authorises a municipality to impose an octroi on animals or goods brought within the octroi limits for consumption or use therein. Under clause (xiv) of that section the municipality is also authorised to impose any other tax which under the Government of India Act, 1935, the Provincial Government has power to impose in the Province. Sub-section (3) provides that nothing in the section shall authorise the imposition of any tax which the Provincial Legislature has no power to impose in the Province under the Government of India Act, 1935, provided that a municipality which immediately before the commencement of Part III of the said Act was lawfully levying any such tax under the section as then in force may continue to levy tax until provision to the contrary is made by the Central Legislature. The Bombay District Municipal Act, 1901, does not contain any definition of "octroi". The provisions of section 59 of that Act are similar to the corresponding provisions of the Bombay Municipal Boroughs Act, 1925, quoted above, excepting that the words "any other tax" are not qualified with the expression as namely, "which under the Government of India Act, 1935, in the Municipal Boroughs Act, 1925, the Provincial Legislature has power to impose in the Province." However, in view of sub-section (3) of section 59 of the Bombay District

Municipal Act, 1901, to expression "any other tax" in clause (xi) of that section would have to be given the same meaning as in clause (xiv) of section 73 of the Bombay Municipal Boroughs Act, 1925.

The true legal position, therefore, is as follows:-

(1) If there be any borough or district municipalities ~~xx~~ which, prior to 1-4-1937, levied an octroi on animals or goods brought within the octroi limits even for sale, such octroi can be continued until provision to the contrary is made by the Central Legislature, even though in the case of a borough municipality such octroi may have been of the nature of a terminal tax(see Advocate General's opinion No. 18 dated the 11th April 1939 quoted in G.R., ~~x~~ G.D.No. 7073, dated the 15th May 1939);

(2) In the case of municipalities which did not levy an octroi on animals or goods brought within the octroi limits for sale, the question arises as to how such levy can hereafter be legally made. After the coming into force of the Government of India Act, 1935, octroi can be referred only to Entry 52 in List II, which speaks of taxes on the entry of goods into a local area for consumption, use or sale therein. Inasmuch as "sale" is contradistinguished from "consumption" or "use, it follows that "sale" cannot be included in the term "use," although ~~x~~ but for this contradistinction, the term used may have been wide enough to include "sale" (see British Motor Syndicate, Ltd., v. Taylor and Son, (1900), 1 ch. 577 at p. 583). Therefore, the octroi permitted by clause (iv) of section 73 of the Bombay Municipal Boroughs Act and clause (iv) of section 59 of the ~~xx~~ Bombay District Municipal Act would not include an octroi on animals or goods brought within the octroi limits for sale. The municipalities would, however, have power to levy such octroi either by recourse to the residuary

clause relating to "any other tax" or (89 to 71)
by inserting the words "or sale" after the word "use" in the clauses relating to octroi in section 73 or section 69. I would prefer the latter course for this reason that the words "any other tax" would ordinarily be construed as taxes and other than octroi, so that it would be unnatural to include in the words "any other tax" an octroi on the entry of goods into the ~~words "any other tax" an octroi on the entry of goods into~~ the local area for sale with reference to Entry 49. Similar words occuring in clause X X-A now revealed to which the Advocate General refers in his opinion quoted above were not restricted in meaning by this consideration because the rules specifically included "octroi" without qualification. It would therefore be safer to amend sections 73 and 69 respectively to empower the municipalities specifically to levy octroi on goods brought within the octroi limits for sale.

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Secretariat of Legal Affairs.

U.R. to H.L.C.D. No. 300/3 dated the 17th March, 1940

C.C.R. S-S-

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Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925.

Section 73, 80 and 99.

Octroi on goods imported.

Under section 73 of the Bombay Municipal Boroughs Act, 1925, octroi is leviable on animals or goods or both brought within the octroi limits for consumption or use therein. A similar provision is contained in section 50 of the Bombay District Municipal Act, 1901. It is clear from these provisions that octroi can be levied only on goods goods or animals which are introduced within the octroi limits for consumption or use therein, and goods which are imported merely for the purpose of export later on or goods that are imported for the purpose of consumption or use therein and later on exported without being consumed or used therein and later on exported without being consumed or used therein would not be liable to octroi duty. The provisions made in the Octroi Rules by various municipalities for payment of octroi duty immediately on the introduction of goods within the octroi limits and for the refund of such duty on the export of the goods on which octroi was levied are intended to tighten the control for the levy of octroi duty. Consequently, if the municipality and Government agree that only such of the foodstuffs as are imported by Government and consumed through ration shops would be liable to octroi duty, the provisions of the Municipal Acts regarding the levy of octroi duty on goods imported within the octroi limits for consumption or use would be deemed to be duly complied with. However, in order that a contract should be warranted by section 48 of the Bombay Municipal Boroughs Act and section 40 of the Bombay District Municipal Act, it must not only be consistent with the substantive provisions of the Act but also with

also with the Octroi Rules thereunder. Moreover inasmuch as the Rules prescribe a particular procedure, the levy of octroi must follow that procedure and none else. The safest course would, therefore, be to have recourse to the provisions of section 99 of the Bombay Municipal Boroughs Act and section 80 of the Bombay District Municipal Act.

Sd/- 24/3

Remembrancer of Legal Affairs.

U.O. to C.S.D., No. 3254 dated 25th March, 1949.

C.G.S. S.G.

C S

The Ahm'd Borough Municipality 75

proposes to add the following new rule 219A for regulating the conditions dubjoyxo ~~xh~~ subjects to which permission may be granted for temporary occupation of ublic streets by laying u underground water-pipes etc.

"The following fees shall levied under sect. 60(1) for the licences granted under by-laws regulating the occupation of public streets by underground water-pipes, drainage, pipes, electric, cables etc.-

1. A- Within Old City Walls-

1. Rs.3/- per running foot per year for water pipe line.

2. Rs. 4/- or running foot per year for drainage lines.

3. Rs.1/- or running foot per year for underground electric cable.

4. Rs.3/- per running foot per year for overhead electric transmission line.

B. Outside City Walls.

XXXXXX X. AAAX AXX

provided that in cases of clauses A & B above, the amount of fees shall be double the rates prescribed therein when the occupation is without the previous permission of the Chief Officer, and that such fees shall be levied irrespecti of any other penalty or liability to which the person liabl to pay the same may be subject under any other provisions of the Act or Rules or by-laws for the time being in force.

A notice under sect. 75(b) of th Bombay Mmy. Boroughs Act has been issued calling for objections to the addition of the proposed rule.

Under cl(s) of sect. 61 of the Bom. Municipal Act, by-laws are proposed to be passed for regulating the conditions on which permission may be granted for the temporary occupati n of public str ets by laying underground water-

water-pipes, drainage ipes, electric cables or overhead electric transmission line etc. By-law 1 of the ~~the~~ proposed by Mun provides that no person shall carry a water-pipe line or a drainage line, an electric cable under any part of a public street, or an overhead electric transmission line without obtaining a license from the Chief officer. By-law No.3 provides ~~that~~ that the license will be granted by the Chief Officer under by-law 1 on the following conditions:-

(a) on payment in advance of an annual fee as prescribed in rule 22 Sch A;

(b) on depositing with the municipality, such amount as may be fixed by the Chief Officer to recoup the expenses of re-instatement of the surface of street both at the time of laying the pipes and their removal after the period of the license. By-law.

By-law 5 prescribes the form of license and by-law 4 prescribes penalty for contravention of the provisions of the by-laws or of the conditions of the license.

The Comm. N.D.States that in view of the decision of the Dist.Judge, Cairo this cont. 22 does not empower the Mun. to levy the fees annually but only once while granting the permission, the Ahm'd Mun.'s ~~s~~ proposal to levy annual fees for occupation of public streets by underground water pipes, drainag pipes, electric cables etc. will not be legal, and suggests that the Municipality may be requested to re-consider its proposal.

The R.L.A. is requested to advise whether in view of the decision of the D.J.Cairo, the rule ~~was~~ proposed by the Ahm'd municipality is not legal.

A.L.R. Reply may be:-

On the narrow point relating to the levy of fees the view taken by the H. and Local Govt. is correct.

Sd/-

U.R. to H. G.D. No. 3603 of 5th April, 1969.

C.G R. G.G.

C S

* p.57-61 note
@ p.113 do
$ p.134 do.

Attention is invited to R.L.A's opinion Nos. 10921 dated *19-11-48 and 2203, dated 23-2-49, and to the note of the Secy. H.& L.G. Deptt. dated 17-3-49. The questions are considered seriatim -

(a) As the resolution dated 28-2-48 appointing Mr. V.M. Desai as Chief Officer was unlawful, his appointment was clearly unlawful. (vide R.L.A's opinion No. 10921 dated 19-11-48). Though the appointment was unlawful, Mr. Desai was paid from the Municipal fund his salary presumably in accordance with the rules framed under sect. 59(c) of the Bom.Municipal Boroughs Act. The ~~xx~~ salary paid cannot be deemed to have been paid "without legal authority". The appointment of Mr. Desai was held to be unlawful after about 10 months and in view of the principle laid down in section 70 of the Indian Contract Act, Mr. Desai was entitled to payment of compensation for the services rendered which were not gratuitous.

(b) As the appointment of Mr. Desai as C.O. was unlawful and void abinitio, the powers exercised and duties performed by him as C.O. would be considered to be illegal. The view expressed by the Secy. H.& L.G. Deptt. is correct.

(c) Attention is invited to R.L.A's No.2203 dated 23-2-49. The view expressed by the Secy. H. & L.G.Deptt. is correct.

A.L.R. Reply may be:-

Seen and returned.

The view taken by Secy. H.& Local Govt. in the three points (a),(b)& (c) is correct.

Sd/-

U.R. to H.& L.G. R. No 3610 of 4th April, 1949.

C.G.R. S-3-

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Office of the R.L.A

Statement of case for Advocate General's Opinion.

Messrs. C.R.F. Angadi, C.P. Malshetti and M.P. Honagudi are the Councillors of the Gadag-Betgeri Borough Municipality. In his letter No. 850, dated 27.10.1948 addressed to the Collector of Dharwar, the President, Gadag Betgeri Borough Municipality states that the said three Councillors attended the meeting of the General Board held on 28th May 1948. After that, the meetings were held on the following dates :

p.33-34 ante.

i. 9th June 1948.

ii. 23nd June 1948.

iii. 16th July 194 .

iv. 24th August 1948.

v. 2nd and 3rd October 1948, and

vi. 15th October 1948.

Of the said meetings, Messrs. Angadi and Malashetti attended the meeting held on the 15th October 1948, but Mr. Honagudi attended none.

Messrs. Angadi, Malashetti and Hosm Honagudi contend that they had applied for leave on 23.8.1948, 31.8.48 and 1.9.1948 respectively. The President admits to have received the applications for leave from Messrs. Angadi and Malashetti on 24th and 31st August respectively, but he states that no such application for leave was received from Mr. Honagudi.

Vide p. 1 ante.

p.35-36 ante.

It is evident that the said Councillors absented themselves from the meetings of the municipality held in June, July and August 1948 without leave of the Municipality. In his letter No. 850, dated 27.10.1948, the President, Gadag

Betgeri Borough Municipality states inter alia as follows;

"Under section 28(1)(d) of the Bombay Municipal Boroughs Act, the leave has got to be obtained to avoid the disability from continuing to be a Councillor. Mere application for leave will not suffice to enable a person to continue to be a Councillor. Since there is an express provision in the municipal Boroughs Act that the leave of the municipality is obligatory, and if he remains absent during four successive months from the meeting of the municipality except with the leave of municipality, he shall be disabled from continuing to be a Councillor and his office shall become vacant".

Agreeing with the above contention; the Collector of Dharwar, inter alia observed ;

pp.23-24 ante.

"The provisions of section 28(1)(d) of the Municipal Boroughs Act are mandatory and the seats of Councillors become vacant if they remain absent from the meetings of the municipality during four successive months without the leave of the municipality. Since the Councillors in question have not obtained leave of the municipality, they stand disqualified under section 28(1)(d) of the Municipal Boroughs Act. The fact that they had presented their applications is by itself not sufficient, as the law enjoins that the leave must be sanctioned, the words used being 'except' with the leave of the Municipality'.

p.127 of Vol. Munis.Cities/39. slip E.

In his opinion No.G.Munis, Cities 17/29,dated 10.5.1939,the G.L.A.(late Mr. Alison) held thus;

" Mr. Patwardhan, however, urges two reasons

against such a decision. The first is that he had applied for leave on 26th of December. The President was not bound to dispose of his application within a particular time. The only absence permitted by section 28(1) (d) is absence with the leave of the municipality i.e. leave previously obtained. The mere fact that Mr. Patwardhan sent in an application for leave just when the period of four months was about to expire affords no condonation of the absence".

With respect, I am unable to subscribe to the aforesaid view taken by the B.L.A., which has been later on followed by the subsequent B.L.As.; for, in my opinion, that view implies that the word "previous" is imported as a qualification of the word "leave". Wherever the Legislature contemplates that previous permission or leave is necessary or should be obtained, specific provision to that effect has been made and in this connection attention is invited to section 3-C(1)(a) of the Bombay Primary Education Act, 1923, and section 7(1)(a) of the Bombay Primary Education Act, 1947.

Section 68(4) of the Government of India Act provides that that if for sixty days a member of a Chamber is without the permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant. According to the practice which has hitherto been followed by the Bombay Provincial Legislature, it appears that even ex-post facto sanction is granted under this provision. The provision in the District Councils Act that a member is disqualified if he is absent

from meetings of the Council or Board for more than six months consecutively, except in the case of illness or for some reason approved by the Council or Board, was construed by the Law Officers of the Crown in 1910 that this disqualification would not arise until the Council declared the office to be vacant and that before doing this, the Council must consider whether the illness or approved excuse prevented the vacancy arising and that such consideration may take place after the expirations of six months of absence (see Blackwell's Law of Meetings, p. 93). Standing orders in respect of meetings of Councils providing that leave of absence may be given at the discretion of the Meeting for a fixed period of time has been construed by Crew in his Law of Public and Company Meetings as allowing the exercising of such discretion before the termination of the period of absence has elapsed which ordinarily vacates office but that statement does not seem to have been supported by any authority and it is not also clear how the standing orders in this respect are worded. The power of exemption is required to be strictly interpreted (see Halsbury's Volume 8,p.39). In the present case two of the members declared to be disqualified admittedly applied to the President of the Municipality in time and if the President had chosen to place it before the Board, their disqualification would in all probability not have been incurred. It was the President who was at fault in failing to place before the Board the applications of the members for leave and if

Xhhe the members are to suffer for the defualt of the President, it would be placing a premium on default in the discharge of duties, if not on dishonesty. Xt It appears, therefore, that it was competent for the President to place the applications of the members before the Board even after the expiry of the period of four successive months so that the Board might decide whether or not permission should be granted. If the Board refuses permission, then the members would be deemed to have incurred disqualification and it would be competent for the Collector to declare their seats vacant under section 28(2). Consequently the order passed in the present case does not give appear to be lawful inasmuch as the Board was not given an opportunity to consider the applications of the members. It would, therefore, appear proper to hold that the order passed by the Collector under section 28(2) is invalid and direct the President fax of the Khuzmoakat Municipality to place the applications of the members concerned before the Board for consideration whether or not permission should be granted.

As the question is of great importance the Advocate General is requested to record his opinion.

Sd/-

Remembrancer of Legal Affairs.
R.U.R. to the Advocate General, Bombay, No. 762
dated the 21st January, 1949.

C.G.R. 8-6

C 5

No. 8 of 1949.

Advocate General's Chamers,
High Court,
Bombay, 13th April 1949.

U.O.R. to the Advocate General of Bombay,
No. 762 dated 21st January 1949.

Opinion.

Under the provisions of section 28(1)(d) of the Municipal Boroughs Act, the seat of Councillors become vacnat if they remain absent from the meetings of the Municipality durikmxfmru during four successive months without the leave of the Municipality. The period of absence in any such case is to be reckoned from the first meeting at which a Councillor is absent and not from the lastm meeting at which he was present. Hitherto the view held by Government by reason of the opinions of its legal remembrancers has been that the leave of the Municipality is a condition precedent, and that if the period of absence is complete before the leave is obtained, there is a disqualification. In other words, the section is to beread as if it contained the words "without" the previous leave of the municipality". The Legal Remembrancer is not of the wam view that such words cannot be read into the section, and that leave can be obtained even after the expiry of the period.

A Councillor may absent himself from one meeting fully intending to attend the next and may be prevented from attending the successive meetings by causes which could not have been anticipated at the beginning of the four months' period. Accordingly the section cannot mean that leave has to be asked for in advance on each occasion. Thus he may have unanticipated causes to be absent from the successive meetings and if after he has failed so to attend a particular meeting, the period of four months is about to expire, he may as a matter of caution, apply for a leave,

for a leave, but that would be on the assumption that the next meeting of the municipality will be held within a period of four months and that he will not be able to attend it, so that after that meeting the four months period will expire, but he would have obtained the leave at that meeting. This does not seem to me to be right. If, say, three and half months have expired and the Councillor then applies for leave, it may be unnecessary, because he may attend the next meeting if fixed within the four months period, or no meeting of the municipality may be held before the expiry of four months period. It seems to me that the only test for leave can be the actual absence for a period of four months. Accordingly, the reasonable way of working the section is not to read it as if it referred to leave previously obtained but to leave which can be obtained at any time. The ordinary way of course is for a Councillor if he anticipates that he will not be able to attend a particular meeting which is fixed, to write and ask for leave to be absent from that meeting. It is difficult to read the section and to work it on the footing that leave for the whole four months period is to be applied for in advance or that in any event leave musth be obtained before the expiry of the four months period.

As pointed out by the R.L-A. in his statement of the case the practice of the Provincial Legislature under section 68(4) of the Government of India Act is that leave is granted even ex post facto, and under the District Council Act, a similar section has been so interpreted (see also Blackwell's Law on Meetings, p. 93).

I am of the opinion that the leave contemplated by section 28(1)(d) of the Municipal Boroughs Act can be obtained even subsequently, and that accordingly the three named Councillors have not become disqualified. Two of them admittedly applied before the expiration

of the period of four months. As to the third, it is a matter of controversy whether he applied or not. Taking the case of the two who applied, it appears anomalous that if they did apply before the expiry of four months, they should be disqualified because the President either did not put those applications up before the meetings held before the expiry of four months, or because no meeting was in fact held within that period. It is not desirable that the section should be so worked as that the disqualification rests upon the willingness of the President to put the application for leave before the meeting or upon the chance of a meeting being held within the period.

Sd/-

Advocate General.

C.G.R. 9-6-

C 5

Office of the R.L.A.

A copy of the x statement of the case together with a copy of the opinion of the Advocate General, Bombay, No.5, dated the 13th April, 1949, is forwarded herewith.

sd/- 13/4

Remembrance of Legal Affairs.

U.R. to H.& L.G.D., No. 4060 , dated the 13th April, 1949.

Secy. H.& L.G.D. (Mr. Gholap).

C.G.R. 9-6-

C B

Office of the R.L.A.

Payment of bonus by Municipalities. The Bombay District Municipal Act, 1901. Section 46(ii)(b).

It appears that the Panvel Municipality has paid a freedom bonus to its employees as per its resolution No. 143, dated 9th August 1947. The Belgaum Municipality has paid victory allowance at the flat rate of Rs. 25 amounting to Rs. 8,775 to all municipal employees. The questions raised for R.L.A's consideration are (1) whether the payment of bonus by municipalities would be covered by clause (b)(ii) of section 46 of the Bombay District Municipal Act, 1901, and (2) whether in view of the fact that the amount of bonus in each case does not exceed Rs. 100 it would not be necessary for the Municipality to obtain the sanction of the Provincial Government or the Commissioner to the payment of bonus.

2. Under clause (b)(ii) of section 46 of the Bombay District Municipal Act, it would be competent for a Municipality to make rules determining the staff of officers and servants to be employed by the Municipality and the respective designations, duties, salaries, fees and absentee or other allowance of such officers and servants and powers and duties delegated to them under section 37. Similar provision is contained in section 50(c) of the Bombay Municipal Boroughs Act, 1925. The term "allowance" has not been defined in both the Acts. In this context the word "allowance" means payment beyond the agreed main salary of the officer, either for additional service rendered by him or otherwise, some perquisite other than the regular salary. (Burgess v.Clark (1884) 14 Q.B.D. 756 at 758). A bonus is not a gift or gratuity but in addition

but a sum paid for services or on some other consideration but in addition to or in excess of that which would ordinarily be given; (See Iyer's Law Lexicon, p. 147). There appears to be little or no difference between an allowance and bonus since both of them contemplate some extra compensation for services or upon some other consideration. Consequently the payment of bonus, be it called by whatever name, would fall within the provisions of clause (b)(ii) of section 46 of the Bombay District Municipal Act and clause (c) of section 58 of the Bombay Municipal Boroughs Act. All that would be necessary to legalise the payment of such bonus is that there should be a rule made by the Municipality as provided therein. It is not known whether any rule to that effect was made by the Panvel Municipality or the Belgaum Municipality with the approval of the proper authority. If no such rule was made with the approval of such authority, the payment of the bonus would be ultra vires.

3. Section 59(2) of the Bombay Municipal Boroughs Act provides that notwithstanding anything contained in clause (a) of the proviso to section 58 etc. a rule under clause (c) of section 58 can be made creating an appointment or increasing the salary etc. or the amount of such allowance or the amount of such increase, as the case may be, provided it does not invlove a charge on the municipal fund exceeding Rs. 100 in the month. This provision cannot be availed of

because a the bonus paid by the Panvel as well as the Belgaum Municipalities exceeds Rs. 100 in the month in which the bonus was paid. Neither clause (s) of section 71 of the Bombay Municipal Boroughs Act nor clause (m) of section 56 of the Bombay District Municipal Act would be applicable because the bonus paid does not relate to any public reception, ceremony, entertainment or exhibition within the municipal limits.

sd/- 14/4
Remembrancer of Legal Affairs.

C.R. to H. and L G.D., No. 4148 , dated the 16th April, 1949.

C.G.R. 9-6-

C 5

Office of the H.L.A.

Disqualification, Bombay Municipal Boroughs Act, 1925. Sec. 12(2)(b) and Sec. 23.

The report of the President of the Bandra Municipality is not quite satisfactory. What is necessary to determine the point in issue is whether councillor J.P.D'Mello has independent means of livelihood. The Collector may be asked to inquire and report with evidence if any on this point; and after receipt of the his report the papers may be returned to the Remembrancer of Legal Affairs for opinion.

Sd/- 13

Remembrancer of Legal Affairs.

J.R. to H.& L.G.D.,No.2430, dated the 2nd March, 1949.

C.G.R. 9-6-

C B

A.A.S. In view of the detailed report of the Collr. B.S.D. at page 29-30 ante, it cannot be said that Mr. J.P. D'mello is disqualified under Sct. 28(1)(a) read with Sect. 12(2) (b) of the Bombay Municipal Boroughs Act, 1925.

Sd/-
1375

U.R. to H.d/G.D. No. 5466 dated the 17th May, 1949.

C.C.R. 9-6-

C S

Office of the H R.L.A.

When as a result of supersession of the Municipality, the Councillors who were responsible for the illegality have ceased to be councillors, it would not be feasible to take action against the Municipality at this juncture, whose affairs are now managed by the Administrator appointed by the Commissioner. If, however, responsibility could be fixed upon any particular officer who is still in service, suitable action can be considered as against him.

Sd/ 28/4

Remembrancer of Legal Affairs.

U.R. to H.D., No. 267 confl. dated the 28th April, 1949.

C.G.R. 9-6-

C 5

Officer of the R.L.A.

The Bombay Municipal Boroughs Act, 1925 section 23(1A).

Section 23(1A) of the Bombay Municipal Boroughs Act provides that a new President or Vice-President, as the case may be, shall be elected within 25 days from the date of the expiry of the term of office of the retiring President or Vice-President. "It has often been held that, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that Act was directory only and might be complied with after the prescribed time". See Maxwell page 380 9th edn. The provisions contained in section 23(1A) relating to the election of a new President or Vice-President within 25 days from the date of the expiry of the term of their office would, therefore, be construed as merely directory and can be complied with even after the expiry of the prescribed period. Consequently, there would be no legal objection to the election of a new President or Vice President even after the expiry of the period of 25 days prescribed by section 23 (1A).

2. Section 23(2) of the Bombay Municipal Boroughs Act provides that the Provisions of section 19A shall be applicable so far as may be to the calling of a meeting and the procedure to be followed at such meeting ~~mmixtha~~ for the election of a President under sub-section (1) or (1A). It is no doubt true that section ~~19A~~ 19A(3) requires the Collector to call

to call the meeting for the second time if the first meeting called by him did not result in the election of a President or Vice-Presedent. ~~This does not mean that if thesecond time if the first meeting called by him did not resul in the kx election of a President or Vice-President.~~ This does not mean that if the second meeting called by the Collector also failed to elect President or Vice-President, all his powers are exhausted. For, under section 14 of the Bombay General Clauses Act, 1904, where an Act confers a power, then, unless the contrary intention appears, the power may be exercised from time to time. Section 19A(3) does not prohibit the Collector from calling a meeting for the third time if the meeting called for the second time also fails to elect a new President. Consequently, there would be no legal objection to the Collector calling a meeting for the third time for the election of a new President or Vice-President, and as stated above, section 23(1A) would also be no bar to electing a new President or Vice-President at such meeting. The Collector should, therefore, be asked to call a fresh meeting for the kxx election of a new President or Vice-President.

3. Section 218(1) of the Bombay Municipal Boroughs Act would not be available, as the Municipality has committed no default in the present case. If there is any default, it is a default on the part of the councillors of the Municipality in failing to elect a new President

~~ex-president~~

to elect a new President or Vice-President. Consequently, no action under section 218(i) against the Municipality would be legally feasible.

Sd/- 3/6
Remembrancer of Legal Affairs,

U.R. to H. & L.G.D. No. 6219, dated the 3rd June, 1949.

C.Q;R. 9-6-

C S

Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925.

section 73 proviso (a)

Express consent of Government under the proviso (a) to section 73 of the Bombay Municipal Boroughs Act, 1925 would be necessary for the levy of the lighting tax (see R.L.A's opinion No. 2178 dated the 23rd February 1949).

Sd/- 11/6

Remembrancer of Legal Affairs.

to H.& L.G.D. No. with file No. 591(23) 46-
No. 6673, dated the 16th June, 1949.

R. 9-6-

Offices of the M.L.A.

The Bombay Municipal Boroughs Act, 1925

Section & 75(a).

It appears that the Amalner Municipality has by rules prescribed the levy of a rate on buildings on the basis of the rental value, and in so doing it has prescribed that so far as the factory premises are concerned, the annual letting value should be determined on the basis of the area. The factory owners at Amalner, it appears, have given a notice of their intention to file a suit against the Municipality. The Secretary, Health and Local Government Department, considers that the determination of the annual letting value of premisses on the floor basis is not lawful, as there would be no scope for filing an appeal as provided for under the Bombay Municipal Boroughs Act. The M.L.A. is requested to advise whether the annual letting value of the premises can be determined on the floor basis.

2. Under section 75(a)(iii) of the Bombay Municipal Boroughs Act, 1925, read with the explanation the basisfor valuation of property for the levy of a rate can be either capital or annual letting value. "Annual letting value"as defined in section 3(1) shall mean the annual rent for which any building or land exclusive of furniture ect., might reasonably be expected to let from year to year and shall include all payments made or agreed to be made by a tenant to the owner of the building or land on account of occupation, taxes, insurance or other charges incidental to his tenancy. Section 75(a) provides for passing a resolution and making rules

rules specifying the tax and the basis of valuation for the levy of such tax. The Act nowhere specifically provides for the mode of determining the annual letting value. Consequently, how the annual letting value should be determined can be prescribed by rules made under section 75(a). In R.L.A's opinion No. 15/30 dated the 11th July 1930 it was held that the method of assessment on the basis of square yard of built area can be regarded as being only a summary method of arriving at the annual value of the Mills and factories, and if so, it did not contravene section 78(1)(d), which prescribes the preparation of assessment list and the valuation based on capital or annual letting value, as the case may be, on which the property is assessed. A similar point was considered by the Chief Judge, Small Causes Court, who has ruled that the mills should be assessed on the floor area basis and fixed a rate of Rs. 3/-per 100 square feet for buildings containing machinery and Rs. 2/- per 100 square feet for all other buildings subject only to 10% statutory deduction. See page 25 of note on the Assessment and Collection Department by Kagal. Section 154 of the City of Bombay Municipal Act, 1888, also provides for determining the ratable value of land or building on the basis of the annual rent for which such land or building might reasonably be expected to let from year to year. It is, therefore, apparent that there is no distinction between the provisions regarding the determination of the ratable value of buildings or lands in Bombay and in the Municipal boroughs. Further, a similar point was considered by the Privy Council in Madras and Southern Maratha Railway Vs. Bezwada Municipality, 61 Indian Appeals page 130. Sub-section (2) of section 82 of the Madras District Municipalities Act, as amended upto 1933, provides for the

for the imposition of property tax on the basis of the annual letting value of lands or buildings. The Beawad Municipality levied the property tax on the basis of the annual letting value of the lands and buildings adopting a percentage of the capital value as a method of ascertaining the annual value of the property for the property tax purposes. Their Lordships of the Privy Council held that the Municipality was not precluded from adopting a percentage of the capital value of the appellant's lands as a method of ascertaining their annual value for the purpose of the imposition of the property Tax. It follows from this decision that it would be open to the Municipality to prescribe any reasonable summary method for ascertaining the annual letting value of lands and buildings for purposes of the levy of property tax. Consequently, the levy of the property tax by the Amalner Municipality on the basis of the annual letting value determinable on the floor basis would be lawful.

3. The objection of the Secretary, Health and Local Government Department that there would be no scope for an appeal if this method of determining the annual letting value is followed is not valid. It would be open to an aggrieved party to appeal if floor area is wrongly calculated or if the tax is not correctly assessed on the basis of the assessment so calculated.

Sd/ 29/6
Remembrancer of Legal Affairs.
U.R. to H. & L.G.D., No. 7236 dated the 30th June, 1949.

C.G.G. 9-6-

C 5

Office of the R.L.A.

The Bombay Municipal Broughs Act, 1925.

Section 66(b).

The question raised for R.L.A's consideration is whether the Ahmednagar Borough Municipalit y can make a contribution to the Poona University under clause (b) of the first proviso to section 66 of the Bombay Municipal Boroughs Act, 1925.

2. Clause (b) of the first proviso to section 66 of the Bombay Municipal Boroughs Act, 1925, provides that it shall be lawful for the municipality with the sanction of the Provincial Government or any officer duly authorized by it in this behalf to make a contribution towards the expenditure incurred by anyother local authority or out of any public funds forthe purposes affecting the health, instruction, safety or convenience of the public and are calculated to benefit the residents within the limits of the contributing municipality. The points relevant for the purpose of deciding this matter would, therefore, be whether the Poona University is a local authority, or whether its funds are public funds, and whether the purpose for which the contribution is proposed to be made by the Ahmednagar Municipality is claculated to benefit the residents within the limits of that municipality. "Local authority" as defined in section 3(26) of the Bombay General Clauses Act means a municipal corporation, municipality, local board, body of port Trust Trustees or Comissioners, or other authority legally entitled to or entrusted by Government with the control or management of a municipal or local fund. The expression "local fund" has not been defined in the Bombay General Clauses Act.

"Local authority" as difined in section 2 of the Local Authorities Loans Act means any person entitled to the control or management of any Local or Municipal fund or legally entitled to impose any cess, rate, duty or tax within any local area. The question would, therefore, turn on whether the funds of the Poona University are local funds within the meaning of these Acts. A similar question was considered by the R.L.A. in his opinion No. 6310, dated the 18th June 1947, where he opined: "The juxtaposition of the words 'local' and 'municipal', must receive due consideration. It is apparent that the word 'local' is used in contradistinction to the word 'mucicipal', the expectation being that both possess the common characteristic of the funds pertaining to Local Self Government. That term 'local fund' occuring in that definition (section 2 of the Local Authorities Loans Act) cannot be given the meaning of a fund merely confined to any locality whatever be the nature of its origin or administration. Attention is in this connection invited to section 74 of the Bombay Local Boards Act, 1923, which says that there shall be in such district a fund which shall be called the local fund". It is clear form this opinion that the funds of the Poona University cannot be considered local funds within the meaning of section 3(26) of the Bombay General Clauses Act or section 2 of the Local Authorities Loans Act. Consequently, the Poona University would not be a "local authority" within the meaning of clause (b) of the first proviso to section 66 of the Bombay Municipal Boroughs Act.

3. The next question for consideration would be whether the funds of the Poona University would be "public funds" within the meaning of clause (b) of the first proviso to section 66. In his opinion dated the 15th July 1940, the Advocate General (Mr. M.C.Setalvad)

observed: "the words Public funds' in sections 62(b) and 66(b) of the District Municipal Act and the Boroughs Act would appear having regard to the context to have a reference to Government funds or the funds belonging to the public revenues and not to public funds in the sense of funds organized and promoted by the public generally/ or funds to which it is open to the public generally to subscribe. See the expression 'public moneys' in section 136 of the Government of India Act, 1935. This interpretation of the words 'any public funds' is however not quite free from doubt. It may with some force be argued that the use of the word 'any' prefixed to the words 'public funds' and the words 'of the public' in the latter part of the sections indicate that the funds referred to are not Government funds but funds which it is open to the public generally to subscribe". Although according to that opinion of the Advocate General, it is doubtful whether any fund to which the public would subscribe would be "public fund" within the meaning of clause (b) of the first proviso to section 66, he inclined to the view that such fund is not a public fund within the meaning of that provision, still the greater difficulty, as pointed out by the Advocate General in that opinion, is created by the closing words of the sub-section, namely, "and calculated to benefit the residents within the limits of the contributing municipality". These words were interpreted by the Advocate General as follows. "Having regard to the scope and nature of the Acts and the language and scope of the two sections under consideration, it is clear that what is contemplated is a direct benefit to the residents within the municipal limits." No doubt the Poona University might bring benefit to the residents of the Ahmednagar Municipality; but such benefit, it appears, would be an indirect benefit to the residents therein, although in the case of Poona Ext Municipality, the position may be different, for, the residents of the Poona Municipality would derive a direct benefit from the Poona University.

It follows, therefore, that even assuming that the funds of the Poona University would be public funds, contribution by the Ahmednagar Municipality to those funds would not be lawful; because, the residents of the Ahmednagar Municipality would derive no direct benefit from the Poona University. The View taken by Education and Industries Deaprtment is correct.

36/- 47

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. No. 7428, dated the 5th July, 1949.

C.G.R. 11-6-

C.S.